

109TH CONGRESS
2D SESSION

H. R. 5043

To amend United States trade laws to address more effectively import crises,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2006

Mr. CARDIN (for himself and Mr. LEVIN) introduced the following bill; which
was referred to the Committee on Ways and Means

A BILL

To amend United States trade laws to address more
effectively import crises, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Restoring America’s Competitiveness Act of 2006”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPLEMENTING A 21ST CENTURY STRATEGIC TRADE POLICY FOR THE UNITED STATES

Sec. 101. National Commission on International Economic Policy.

Sec. 102. ITC reports on trade agreements.

- Sec. 103. Negotiating objectives regarding trade remedy laws.
- Sec. 104. Consultations and assessments regarding trade Agreements.
- Sec. 105. Effective date.

TITLE II—AMERICAN MANUFACTURING COMPETITIVENESS

- Sec. 201. Affirmation of negotiating objective on border taxes.
- Sec. 202. Presidential certification; application of U.S. countervailing duty law.

TITLE III—DISPUTE SETTLEMENT

Subtitle A—Congressional Advisory Commission on WTO Dispute Settlement

- Sec. 301. Congressional findings and purpose.
- Sec. 302. Establishment of Commission.
- Sec. 303. Duties of the Commission.
- Sec. 304. Powers of the Commission.
- Sec. 305. Definitions.
- Sec. 306. Effective date.

Subtitle B—Participation in WTO Panel Proceedings

- Sec. 311. Participation in WTO panel proceedings.
- Sec. 312. Definitions.

Subtitle C—Trade Dispute Functions

- Sec. 321. Responsibility of USTR.

TITLE IV—SUBSIDIES

- Sec. 401. Application of countervailing duties to nonmarket economy countries.
- Sec. 402. Clarification to include exchange-rate manipulation as countervailable subsidy under title VII of the Tariff Act of 1930.
- Sec. 403. ITC study of subsidies by People's Republic of China.

TITLE V—STRENGTHENING U.S. UNFAIR TRADE LAWS

Subtitle A—Determination of Dumping

- Sec. 501. Polling of industry support in antidumping cases.
- Sec. 502. New shipper bonding privilege.
- Sec. 503. Prevention of circumvention.
- Sec. 504. Absorption of antidumping duties.
- Sec. 505. Absorption of antidumping duties in sunset review.
- Sec. 506. Export price and constructed export price.
- Sec. 507. Nonmarket economy methodology.
- Sec. 508. Adjustment of constructed values for imputed credit costs.
- Sec. 509. Determinations on the basis of facts available.

Subtitle B—Determination of Subsidization

- Sec. 521. Countervailable subsidy.

Subtitle C—Determination of Material Injury

- Sec. 531. Period to determine material injury.
- Sec. 532. Captive production.
- Sec. 533. Price.

- Sec. 534. Vulnerability of industry; cumulation.
- Sec. 535. Causal relationship between imports and injury.
- Sec. 536. Perishable agricultural products.
- Sec. 537. Antidumping cases against the European Union.
- Sec. 538. Verification by the commission.

Subtitle D—General Provisions

- Sec. 541. Determination of cash deposit rates.
- Sec. 542. Exchange of information between and among agencies.
- Sec. 543. Liquidation of certain entries.
- Sec. 544. Assistant Attorney General for Trade Law Enforcement.

Subtitle E—Effective Date

- Sec. 551. Effective date.

TITLE VI—SAFEGUARD AMENDMENTS

Subtitle A—Safeguards in General

- Sec. 601. Amendments to chapter 1 of title II of the Trade Act of 1974.

Subtitle B—Fair Trade With China

- Sec. 611. Clarification of standard for Presidential action on ITC finding of market disruption.

Subtitle C—Report on Doha Round

- Sec. 621. Report.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Construction.
- Sec. 702. Application to goods from Canada and Mexico.

TITLE I—IMPLEMENTING A 21st CENTURY STRATEGIC TRADE POLICY FOR THE UNITED STATES

SEC. 101. NATIONAL COMMISSION ON INTERNATIONAL ECONOMIC POLICY.

(a) ESTABLISHMENT.—There is established a commission to be known as the “National Commission on International Economic Policy” (in this section referred to as the “Commission”).

1 (b) RESPONSIBILITIES.—The Commission shall pre-
2 pare and submit to the Congress, not later than 12
3 months after the members of the Commission are first ap-
4 pointed, a report containing the Commission’s rec-
5 ommendations for a comprehensive trade negotiating
6 strategy for the United States. In the report, the Commis-
7 sion shall address the following:

8 (1) Burgeoning United States trade deficits and
9 their consequences for the United States and global
10 economies.

11 (2) Historically unprecedented levels of foreign
12 holdings of United States debt arising out of the
13 deficits, and the consequences of those levels for the
14 United States and global economies.

15 (3) New evidence and reports that increased
16 trade alone does not increase standards of living in
17 the United States or around the world.

18 (4) The causes and impact of badly stalled mul-
19 tilateral trade negotiations and options for moving
20 the negotiations to closure speedily.

21 (5) Disturbing data that most of the world’s
22 poorest countries account for a smaller share of
23 world trade in 2006 than they did a generation ago.

24 (6) Challenges and new responsibilities facing
25 more advanced developing countries.

1 (7) The impact of the People's Republic of
2 China on global trade flows.

3 (8) The impact of unfair trade practices by the
4 People's Republic of China, including currency ma-
5 nipulation and subsidies.

6 (9) The adequacy of existing international trade
7 rules to address resurgent government industrial
8 policies abroad, such as in the People's Republic of
9 China, the Russian Federation, and the European
10 Union, and in sectors such as large commercial air-
11 craft and commercial aircraft engines.

12 (10) The decline of the United States manufac-
13 turing sector in general and employment in the
14 United States manufacturing sector in particular.

15 (11) Outsourcing and temporary entry issues in
16 the services sector.

17 (c) MEMBERSHIP.—

18 (1) APPOINTMENT.—The Commission shall be
19 composed of 9 members, who shall be appointed as
20 follows:

21 (A) 2 members shall be appointed by the
22 Speaker of the House of Representatives.

23 (B) 2 members shall be appointed by the
24 minority leader of the House of Representa-
25 tives.

1 (C) 2 members shall be appointed by the
2 majority leader of the Senate.

3 (D) 2 members shall be appointed by the
4 minority leader of the Senate.

5 (E) 1 member, who shall be the chair-
6 person of the Commission, shall be appointed
7 by the other 8 members of the Commission.

8 (2) QUALIFICATIONS.—Members of the Com-
9 mission shall be appointed from among persons who,
10 because of their knowledge and experience, are lead-
11 ers in the field of international trade and finance,
12 including leaders in the fields of labor, business,
13 nongovernmental organizations, and academia. Mem-
14 bers shall be appointed without regard to political
15 affiliation and solely on the basis of their fitness to
16 perform the duties of the Commission.

17 (3) DATE.—The appointments of the initial
18 members of the Commission shall be made not later
19 than 30 days after the date of the enactment of this
20 Act.

21 (4) PERIOD OF APPOINTMENT; VACANCIES.—

22 (A) IN GENERAL.—Members of the Com-
23 mission shall each be appointed for the life of
24 the Commission.

1 (B) VACANCIES.—Any vacancy on the
2 Commission shall not affect its powers, but
3 shall be filled in the same manner as the origi-
4 nal appointment was made and shall be subject
5 to the same conditions as the original appoint-
6 ment.

7 (d) INITIAL MEETING.—Not later than 30 days after
8 the date on which all members of the Commission have
9 been appointed, the Commission shall hold its first meet-
10 ing.

11 (e) MEETINGS.—The Commission shall meet at the
12 call of the Chairperson.

13 (f) QUORUM.—A majority of the members of the
14 Commission shall constitute a quorum, but a lesser num-
15 ber of members may hold hearings.

16 (g) FUNDING.—Members of the Commission shall be
17 allowed travel expenses, including per diem in lieu of sub-
18 sistence at rates authorized for employees of agencies
19 under subchapter I of chapter 57 of title 5, United States
20 Code, while away from their homes or regular places of
21 business in the performance of services for the Commis-
22 sion.

23 (h) INFORMATION FROM FEDERAL AGENCIES AND
24 DEPARTMENTS.—

1 (1) IN GENERAL.—The Commission may secure
2 directly from any Federal department or agency
3 such information as the Commission considers nec-
4 essary to carry out the provisions of this section.
5 Upon the request of the chairperson of the Commis-
6 sion, the head of such department or agency shall
7 furnish the information requested to the Commission
8 in a timely manner.

9 (2) CONFIDENTIALITY.—The Commission shall
10 protect from disclosure any document or information
11 submitted to it by a department or agency of the
12 United States which the agency or department re-
13 quests be kept confidential. The Commission shall
14 not be considered to be an agency for purposes of
15 section 552 of title 5, United States Code.

16 (i) HEARINGS.—The Commission may hold such
17 hearings as the Commission considers necessary to carry
18 out its functions.

19 (j) TERMINATION OF COMMISSION.—The Commis-
20 sion shall terminate 30 days after the date on which it
21 submits its report to the Congress under subsection (b).

22 (k) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated such sums as may be
24 necessary to carry out this section.

1 **SEC. 102. ITC REPORTS ON TRADE AGREEMENTS.**

2 Section 2104 of the Bipartisan Trade Promotion Au-
3 thority Act of 2002 (19 U.S.C. 3804) is amended—

4 (1) by redesignating subsection (f) as sub-
5 section (g); and

6 (2) by inserting after subsection (e) the fol-
7 lowing new subsection:

8 “(f) REPORTS BY ITC.—

9 “(1) PRIOR TO NEGOTIATIONS.—At least 120
10 days before initiating negotiations with respect to
11 any agreement that is subject to the provisions of
12 section 2103(b), the President shall notify the Inter-
13 national Trade Commission of the proposed negotia-
14 tions. The Commission shall, by not later than the
15 end of that 120-day period, prepare and submit to
16 the Congress a comprehensive report on the effects
17 the proposed agreement may have on industries in
18 the United States, both in terms of effects of in-
19 creased imports into the United States and benefits
20 of potential increases in exports of products and
21 services of the United States to foreign countries
22 that would be parties to the agreement.

23 “(2) SUBSEQUENT REPORTS.—The Inter-
24 national Trade Commission shall prepare and sub-
25 mit to the Congress reports on the effects of any
26 agreement subject to the provisions of section

1 2103(b) that is entered into pursuant to the negotia-
2 tions on which a report is submitted under para-
3 graph (1), both in terms of effects of increased im-
4 ports into the United States and benefits of in-
5 creased exports of products and services of the
6 United States to foreign countries that are parties
7 to the agreement. Reports under this paragraph
8 shall be submitted to the Congress not later than 1
9 year, 3 years, 5 years, and 10 years after the agree-
10 ment is entered into.”.

11 **SEC. 103. NEGOTIATING OBJECTIVES REGARDING TRADE**
12 **REMEDY LAWS.**

13 Section 2102(b)(14) of the Trade Act of 2002 (19
14 U.S.C. 3801(b)) is amended by adding at the end the fol-
15 lowing flush sentence:

16 “In order to carry out subparagraph (A), the United
17 States Trade Representative should not agree to any pro-
18 posal, whether in the context of a trade agreement entered
19 into under the auspices of the World Trade Organization,
20 or a free trade agreement with another country or group
21 of countries, that would, either individually or in combina-
22 tion with other proposals, weaken existing United States
23 trade remedy laws contained in title VII of the Tariff Act
24 of 1930 or chapter 1 of title II of the Trade Act of 1974,
25 including any proposal that would make obtaining relief

1 under those provisions more difficult, uncertain, or costly
2 for domestic industries to achieve or maintain over time.”.

3 **SEC. 104. CONSULTATIONS AND ASSESSMENTS REGARDING**
4 **TRADE AGREEMENTS.**

5 Section 2104(d)(3)(A) of the Trade Act of 2002 (19
6 U.S.C. 3804(d)(3)(A)) is amended—

7 (1) in clause (i), by striking “and” after the
8 semicolon;

9 (2) in clause (ii), by striking the period and in-
10 serting a semicolon; and

11 (3) by adding after clause (ii) the following:

12 “(iii) with respect to each specific pro-
13 posal that could require amendments to
14 title VII of the Tariff Act of 1930 or chap-
15 ter 1 of title II of the Trade Act of 1974,
16 whether and to what extent the proposal
17 would, either individually or in combination
18 with other proposals, make obtaining relief
19 under these provisions more difficult, un-
20 certain, or costly for domestic industries to
21 achieve or maintain over time; and

22 “(iv) for each specific proposal that
23 the President reports would not (whether
24 individually or in combination with other
25 proposals) make obtaining relief under title

1 VII of the Tariff Act of 1930 or chapter
 2 1 of title II of the Trade Act of 1974 more
 3 difficult, uncertain, or costly for domestic
 4 industries to achieve or maintain over
 5 time, a detailed explanation providing the
 6 basis for this conclusion.”.

7 **SEC. 105. EFFECTIVE DATE.**

8 The amendments made by this title take effect on the
 9 date of the enactment of this Act.

10 **TITLE II—AMERICAN MANUFAC-**
 11 **TURING COMPETITIVENESS**

12 **SEC. 201. AFFIRMATION OF NEGOTIATING OBJECTIVE ON**
 13 **BORDER TAXES.**

14 The Congress reaffirms the negotiating objective re-
 15 lating to border taxes set forth in section 2102(b)(15) of
 16 the Trade Act of 2002 (19 U.S.C. 3802(b)(15)).

17 **SEC. 202. PRESIDENTIAL CERTIFICATION; APPLICATION OF**
 18 **U.S. COUNTERVAILING DUTY LAW.**

19 (a) CERTIFICATION BY THE PRESIDENT.—If by Jan-
 20 uary 1, 2008, the President does not certify to the Con-
 21 gress that, under the Agreement on Subsidies and Coun-
 22 tervailing Measures or subsequent agreement of the World
 23 Trade Organization, the full or partial exemption, remis-
 24 sion, or deferral specifically related to exports of direct
 25 taxes is treated in the same manner as the full or partial

1 exemption, remission, or deferral specifically related to ex-
 2 ports of indirect taxes, then as of January 1, 2008, the
 3 Secretary of Commerce, in any investigation conducted
 4 under subchapter A of title VII of the Tariff Act of 1930
 5 to determine whether a countervailable subsidy is being
 6 provided with respect to a product of a country that pro-
 7 vides the full or partial exemption, remission, or deferral
 8 specifically related to exports of indirect taxes on products
 9 exported from that country, shall treat as a
 10 countervailable subsidy the full or partial exemption, re-
 11 mission, or deferral specifically related to exports of indi-
 12 rect taxes paid on that product.

13 (b) DEFINITIONS.—In this section:

14 (1) AGREEMENT ON SUBSIDIES AND COUNTER-
 15 VAILING MEASURES.—The term “Agreement on Sub-
 16 sidies and Countervailing Measures” means the
 17 agreement referred to in section 101(d)(12) of the
 18 Uruguay Round Agreements Act (19 U.S.C.
 19 3511(d)(12)).

20 (2) DIRECT TAXES.—The term “direct taxes”
 21 means taxes on wages, profits, interest, rents, royal-
 22 ties, and all other forms of income, and taxes on the
 23 ownership of real property.

1 (3) IMPORT CHARGES.—The term “import
2 charges” means tariffs, duties, and other fiscal
3 charges that are levied on imports.

4 (4) INDIRECT TAXES.—The term “indirect
5 taxes” means sales, excise, turnover, value added,
6 franchise, stamp, transfer, inventory, and equipment
7 taxes, border taxes, and all taxes other than direct
8 taxes and import charges.

9 (5) FULL OR PARTIAL EXEMPTION, REMISSION,
10 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS
11 OF DIRECT TAXES.—The term “full or partial ex-
12 emption, remission, or deferral specifically related to
13 exports of direct taxes” means direct taxes that are
14 paid to the United States Government by a business
15 concern and are fully or partially exempted, remit-
16 ted, or deferred by the Government by reason of the
17 export by that business concern of its products from
18 the United States.

19 (6) FULL OR PARTIAL EXEMPTION, REMISSION,
20 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS
21 OF INDIRECT TAXES.—The term “full or partial ex-
22 emption, remission, or deferral specifically related to
23 exports of indirect taxes” means indirect taxes that
24 are paid to the government of a country by a busi-
25 ness concern and are fully or partially exempted, re-

mitted, or deferred by that government by reason of the export by that business concern of its products from that country.

(c) EFFECTIVE PERIOD.—

(1) IN GENERAL.—Subsection (a) shall cease to be effective on the date on which the President makes a certification described in subsection (a).

(2) TERMINATION OF CVD ORDERS.—Any countervailing duty order that is issued pursuant to an investigation conducted under subsection (a) and is still in effect on the date described in paragraph (1) shall terminate on that date.

TITLE III—DISPUTE SETTLEMENT

Subtitle A—Congressional Advisory Commission on WTO Dispute Settlement

SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The United States joined the World Trade Organization as an original member with the goal of creating an improved global trading system and providing expanded economic opportunities for United States workers, farmers, and businesses.

1 (2) The dispute settlement rules of the WTO
2 were created to enhance the likelihood that govern-
3 ments will observe their WTO obligations.

4 (3) These dispute settlement rules help ensure
5 that the United States can reap the full benefits of
6 its participation in the WTO.

7 (4) Successful operation of the WTO dispute
8 settlement system was critical to congressional ap-
9 proval of the Uruguay Round Agreements and is
10 critical to continued support by the United States
11 for the WTO. In particular, it is imperative that dis-
12 pute settlement panels and the Appellate Body—

13 (A) operate with fairness and in an impar-
14 tial manner;

15 (B) strictly observe the terms of reference
16 and any applicable standard of review set forth
17 in the Uruguay Round Agreements; and

18 (C) not add to the obligations, or diminish
19 the rights, of WTO members under the Uru-
20 guay Round Agreements in violation of Articles
21 3.2 and 19.2 of the Dispute Settlement Under-
22 standing.

23 (5) An increasing number of reports by dispute
24 settlement panels and the Appellate Body have
25 raised serious concerns within the Congress about

1 the ability of the WTO dispute settlement system to
2 operate in accordance with paragraph (4).

3 (6) In particular, several reports of dispute set-
4 tlement panels and the Appellate Body have added
5 to the obligations and diminished the rights of WTO
6 members, particularly under the Agreement on Im-
7 plementation of Article VI of the General Agreement
8 on Tariffs and Trade 1994, the Agreement on Sub-
9 sidies and Countervailing Measures, and the Agree-
10 ment on Safeguards.

11 (7) In order to come into compliance with re-
12 ports of dispute settlement panels and the Appellate
13 Body that have been adopted by the Dispute Settle-
14 ment Body, the Congress may need to amend or re-
15 peal statutes of the United States. In such cases, the
16 Congress must have a high degree of confidence that
17 the reports are in accordance with paragraph (4).

18 (8) The Congress needs impartial, objective,
19 and juridical advice to determine the appropriate re-
20 sponse to reports of dispute settlement panels and
21 the Appellate Body.

22 (9) The United States remains committed to
23 the multilateral, rules-based trading system.

24 (b) PURPOSE.—It is the purpose of this subtitle to
25 provide for the establishment of the Congressional Advi-

1 sory Commission on WTO Dispute Settlement to provide
2 objective and impartial advice to the Congress on the oper-
3 ation of the dispute settlement system of the World Trade
4 Organization.

5 **SEC. 302. ESTABLISHMENT OF COMMISSION.**

6 (a) ESTABLISHMENT.—There is established a com-
7 mission to be known as the Congressional Advisory Com-
8 mission on WTO Dispute Settlement (in this subtitle re-
9 ferred to as the “Commission”).

10 (b) MEMBERSHIP.—

11 (1) COMPOSITION.—The Commission shall be
12 composed of 5 members, all of whom shall be judges
13 or former judges of the Federal judicial circuits and
14 shall be appointed by the Speaker of the House of
15 Representatives and the President pro tempore of
16 the Senate after considering the recommendations of
17 the Chairman and ranking member of the Com-
18 mittee on Finance of the Senate and the Chairman
19 and ranking member of the Committee on Ways and
20 Means of the House of Representatives. Commis-
21 sioners shall be chosen without regard to political af-
22 filiation and solely on the basis of each Commis-
23 sioner’s fitness to perform the duties of a Commis-
24 sioner.

1 (2) DATE.—The appointments of the initial
2 members of the Commission shall be made not later
3 than 90 days after the date of the enactment of this
4 Act.

5 (c) PERIOD OF APPOINTMENT; VACANCIES.—

6 (1) IN GENERAL.—Members of the Commission
7 shall each be appointed for a term of 5 years, except
8 that of the members first appointed, 3 members
9 shall be appointed for terms of 3 years.

10 (2) VACANCIES.—

11 (A) IN GENERAL.—Any vacancy on the
12 Commission shall not affect its powers, but
13 shall be filled in the same manner as the origi-
14 nal appointment was made and shall be subject
15 to the same conditions as the original appoint-
16 ment.

17 (B) UNEXPIRED TERM.—An individual
18 chosen to fill a vacancy shall be appointed for
19 the unexpired term of the member replaced.

20 (d) INITIAL MEETING.—Not later than 30 days after
21 the date on which all members of the Commission have
22 been appointed, the Commission shall hold its first meet-
23 ing.

24 (e) MEETINGS.—The Commission shall meet at the
25 call of the Chairperson.

1 (f) QUORUM.—A majority of the members of the
 2 Commission shall constitute a quorum, but a lesser num-
 3 ber of members may hold hearings.

4 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
 5 Commission shall select a Chairperson and Vice Chair-
 6 person from among its members.

7 (h) FUNDING.—Members of the Commission shall be
 8 allowed travel expenses, including per diem in lieu of sub-
 9 sistence at rates authorized for employees of agencies
 10 under subchapter I of chapter 57 of title 5, United States
 11 Code, while away from their homes or regular places of
 12 business in the performance of services for the Commis-
 13 sion.

14 **SEC. 303. DUTIES OF THE COMMISSION.**

15 (a) ADVISING CONGRESS ON THE OPERATION OF
 16 THE WTO DISPUTE SETTLEMENT SYSTEM.—

17 (1) IN GENERAL.—The Commission shall re-
 18 view—

19 (A) all adverse reports of dispute settle-
 20 ment panels and the Appellate Body which
 21 are—

22 (i) adopted by the Dispute Settlement
 23 Body; and

1 (ii) the result of a proceeding initiated
2 against the United States by a WTO mem-
3 ber; and

4 (B) upon the request of the Committee on
5 Ways and Means of the House of Representa-
6 tives or the Committee on Finance of the Sen-
7 ate—

8 (i) any adverse report of a dispute
9 settlement panel or the Appellate Body—

10 (I) which is adopted by the Dis-
11 pute Settlement Body; and

12 (II) in which the United States is
13 a complaining party; or

14 (ii) any other finding which is con-
15 tained in a report of a dispute settlement
16 panel or the Appellate Body that is adopt-
17 ed by the Dispute Settlement Body.

18 (2) SCOPE OF REVIEW.—The Commission shall
19 advise the Congress in connection with each adverse
20 finding or other finding under paragraph (1) (B)
21 only whether—

22 (A) the dispute settlement panel or the Ap-
23 pellate Body, as the case may be—

24 (i) exceeded its authority or its terms
25 of reference;

1 (ii) added to the obligations, or dimin-
2 ished the rights, of the United States
3 under the Uruguay Round Agreement
4 which is the subject of the finding;

5 (iii) acted arbitrarily or capriciously,
6 engaged in misconduct, or demonstrably
7 departed from the procedures specified for
8 panels and the Appellate Body in the ap-
9 plicable Uruguay Round Agreement; and

10 (iv) deviated from the applicable
11 standard of review, including in anti-
12 dumping, countervailing duty, and other
13 unfair trade remedy cases, the standard of
14 review set forth in Article 17.6 of the
15 Agreement on Implementation of Article
16 VI of the General Agreement on Tariffs
17 and Trade 1994; and

18 (B) the finding is consistent with the origi-
19 nal understanding by the United States of the
20 Uruguay Round Agreement that is the subject
21 of the finding as explained in the statement of
22 administrative action approved under section
23 101(a) of the Uruguay Round Agreements Act
24 (19 U.S.C. 3511(a)).

1 (3) NO DEFERENCE.—Applying the standards
2 set forth in paragraph (2) requires that the Commis-
3 sion not accord deference to findings of law made by
4 the dispute settlement panel or the Appellate Body,
5 as the case may be.

6 (b) DETERMINATION; REPORT.—

7 (1) DETERMINATION.—

8 (A) IN GENERAL.—Not later than 150
9 days after the date on which the Commission
10 receives notice of a report or request under sec-
11 tion 304(b), the Commission shall make a writ-
12 ten determination with respect to the matters
13 described in paragraph (2) of subsection (a), in-
14 cluding a full analysis of the basis for its deter-
15 mination. A vote by a majority of the members
16 of the Commission shall constitute a determina-
17 tion of the Commission, although the members
18 need not agree on the basis for their vote.

19 (B) DISSENTING OR CONCURRING OPIN-
20 IONS.—Any member of the Commission who
21 disagrees with a determination of the Commis-
22 sion or who concurs in such a determination on
23 a basis different from that of the Commission
24 or other members of the Commission, may write

1 an opinion expressing such disagreement or
2 concurrence, as the case may be.

3 (2) REPORT.—The Commission shall promptly
4 report the determinations described in paragraph
5 (1)(A) to the Committee on Ways and Means of the
6 House of Representatives and the Committee on Fi-
7 nance of the Senate. The Commission shall include
8 with the report any opinions written under para-
9 graph (1)(B) with respect to the determination.

10 (c) AVAILABILITY TO THE PUBLIC.—Each report of
11 the Commission under subsection (b)(2), together with the
12 opinions included with the report, shall be made available
13 to the public.

14 **SEC. 304. POWERS OF THE COMMISSION.**

15 (a) HEARINGS.—The Commission may hold a public
16 hearing to solicit views concerning a report of a dispute
17 settlement panel or the Appellate Body described in sec-
18 tion 303(a)(1), if the Commission considers such hearing
19 to be necessary to carry out the purpose of this subtitle.
20 The Commission shall provide reasonable notice of a hear-
21 ing held pursuant to this subsection.

22 (b) INFORMATION FROM INTERESTED PARTIES AND
23 FEDERAL AGENCIES.—

24 (1) NOTICE TO COMMISSION.—

1 (A) UNDER SECTION 303(a)(1)(A).—The
2 Trade Representative shall advise the Commis-
3 sion not later than 5 business days after the
4 date the Dispute Settlement Body adopts a re-
5 port of a panel or the Appellate Body that is
6 to be reviewed by the Commission under section
7 303(a)(1)(A).

8 (B) UNDER SECTION 303(a)(1)(B).—The
9 Committee on Ways and Means or the Com-
10 mittee on Finance, as the case may be, may
11 make and notify the Commission of a request
12 under section 303(a)(1)(B) not later than 1
13 year after the Dispute Settlement Body adopts
14 the report that is the subject of the request.

15 (C) REPORTS ADOPTED PRIOR TO AP-
16 POINTMENT OF COMMISSION.—With respect to
17 any report to which section 303(a)(1)(B) ap-
18 plies and that is adopted before the date on
19 which the first members of the Commission are
20 appointed under section 302(b)(2), the Com-
21 mittee on Ways and Means or the Committee
22 on Finance, as the case may be, may make and
23 notify the Commission of a request under sec-
24 tion 303(a)(1)(B) with respect to that report
25 not later than 1 year after the date on which

1 the first members of the Commission are ap-
2 pointed under section 302(b)(2).

3 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
4 MATION.—

5 (A) IN GENERAL.—The Commission shall
6 promptly publish in the Federal Register notice
7 of the notice received under paragraph (1) from
8 the Trade Representative, the Committee on
9 Ways and Means, or the Committee on Fi-
10 nance, as the case may be, along with notice of
11 an opportunity for interested parties to submit
12 written comments to the Commission. The
13 Commission shall make comments submitted
14 pursuant to the preceding sentence available to
15 the public.

16 (B) INFORMATION FROM FEDERAL AGEN-
17 CIES AND DEPARTMENTS.—The Commission
18 may also secure directly from any Federal de-
19 partment or agency such information as the
20 Commission considers necessary to carry out
21 the provisions of this subtitle. Upon the request
22 of the chairperson of the Commission, the head
23 of such department or agency shall furnish the
24 information requested to the Commission in a
25 timely manner.

1 (3) ACCESS TO PANEL AND APPELLATE BODY
2 DOCUMENTS.—

3 (A) IN GENERAL.—The Trade Representa-
4 tive shall make available to the Commission all
5 submissions and relevant documents relating to
6 a report of a panel or the Appellate Body de-
7 scribed in section 303(a)(1), including any in-
8 formation contained in such submissions identi-
9 fied by the provider of the information as pro-
10 prietary information or information designated
11 as confidential by a foreign government.

12 (B) PUBLIC ACCESS.—Any document
13 which the Trade Representative submits to the
14 Commission shall be available to the public, ex-
15 cept information which is identified as propri-
16 etary or confidential or the disclosure of which
17 would otherwise violate the rules of the WTO.

18 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
19 FIDENTIALITY.—

20 (1) ADMINISTRATIVE ASSISTANCE.—Any agency
21 or department of the United States that is des-
22 ignated by the President shall provide administrative
23 services, funds, facilities, staff, or other support
24 services to the Commission to assist the Commission
25 with the performance of the Commission's functions.

1 (2) CONFIDENTIALITY.—The Commission shall
2 protect from disclosure any document or information
3 submitted to it by a department or agency of the
4 United States which the agency or department re-
5 quests be kept confidential. The Commission shall
6 not be considered to be an agency for purposes of
7 section 552 of title 5, United States Code.

8 **SEC. 305. DEFINITIONS.**

9 In this subtitle:

10 (1) ADVERSE FINDING.—The term “adverse
11 finding” means—

12 (A) in a proceeding of a panel or the Ap-
13 pellate Body that is initiated against the United
14 States, a finding by the panel or the Appellate
15 Body that any law or regulation of, or applica-
16 tion thereof by, the United States, or any State,
17 is inconsistent with the obligations of the
18 United States under a Uruguay Round Agree-
19 ment (or nullifies or impairs benefits accruing
20 to a WTO member under such an Agreement);
21 or

22 (B) in a proceeding of a panel or the Ap-
23 pellate Body in which the United States is a
24 complaining party, any finding by the panel or
25 the Appellate Body that a measure of the party

1 complained against is not inconsistent with that
2 party's obligations under a Uruguay Round
3 Agreement (or does not nullify or impair bene-
4 fits accruing to the United States under such
5 an Agreement).

6 (2) APPELLATE BODY.—The term “Appellate
7 Body” means the Appellate Body established by the
8 Dispute Settlement Body pursuant to Article 17.1 of
9 the Dispute Settlement Understanding.

10 (3) DISPUTE SETTLEMENT BODY.—The term
11 “Dispute Settlement Body” means the Dispute Set-
12 tlement Body established pursuant to the Dispute
13 Settlement Understanding.

14 (4) DISPUTE SETTLEMENT PANEL; PANEL.—
15 The terms “dispute settlement panel” and “panel”
16 mean a panel established pursuant to Article 6 of
17 the Dispute Settlement Understanding.

18 (5) DISPUTE SETTLEMENT UNDERSTANDING.—
19 The term “Dispute Settlement Understanding”
20 means the Understanding on Rules and Procedures
21 Governing the Settlement of Disputes referred to in
22 section 101(d)(16) of the Uruguay Round Agree-
23 ments Act (19 U.S.C. 3511(d)(16)).

1 (6) TERMS OF REFERENCE.—The term “terms
2 of reference” has the meaning given that term in the
3 Dispute Settlement Understanding.

4 (7) TRADE REPRESENTATIVE.—The term
5 “Trade Representative” means the United States
6 Trade Representative.

7 (8) URUGUAY ROUND AGREEMENT.—The term
8 “Uruguay Round Agreement” means any of the
9 Agreements described in section 101(d) of the Uru-
10 guay Round Agreements Act.

11 (9) WORLD TRADE ORGANIZATION; WTO.—The
12 terms “World Trade Organization” and “WTO”
13 mean the organization established pursuant to the
14 WTO Agreement.

15 (10) WTO AGREEMENT.—The term “WTO
16 Agreement” means the Agreement Establishing the
17 World Trade Organization entered into on April 15,
18 1994.

19 (11) WTO MEMBER.—The term “WTO mem-
20 ber” has the meaning given that term in section
21 2(10) of the Uruguay Round Agreements Act (19
22 U.S.C. 3501(10)).

23 **SEC. 306. EFFECTIVE DATE.**

24 This subtitle shall take effect on the date of the en-
25 actment of this Act.

1 **Subtitle B—Participation in WTO**
2 **Panel Proceedings**

3 **SEC. 311. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

4 (a) IN GENERAL.—If the United States Trade Rep-
5 resentative, in proceedings before a dispute settlement
6 panel or the Appellate Body of the WTO, seeks—

7 (1) to enforce United States rights under a
8 multilateral trade agreement, or

9 (2) to defend a challenged action or determina-
10 tion of the United States Government,

11 a private United States person that is supportive of the
12 United States Government’s position before the panel or
13 Appellate Body and that has a direct economic interest
14 in the panel’s or Appellate Body’s resolution of the mat-
15 ters in dispute shall be permitted to participate in con-
16 sultations and panel proceedings. The Trade Representa-
17 tive shall issue regulations, consistent with subsections (b)
18 and (c), ensuring full and effective participation by any
19 such private person.

20 (b) ACCESS TO INFORMATION.—The United States
21 Trade Representative shall make available to persons de-
22 scribed in subsection (a) all information presented to or
23 otherwise obtained by the Trade Representative in connec-
24 tion with a WTO dispute settlement proceeding. The
25 United States Trade Representative shall promulgate reg-

1 ulations implementing a protective order system to protect
2 information designated by the submitting member as con-
3 fidential.

4 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-
5 quest from a person described in subsection (a), the
6 United States Trade Representative shall—

7 (1) consult in advance with such person regard-
8 ing the content of written submissions from the
9 United States to the WTO panel concerned or to the
10 other member countries involved;

11 (2) include, if appropriate, such person or its
12 appropriate representative as an advisory member of
13 the delegation in sessions of the dispute settlement
14 panel;

15 (3) allow such special delegation member, if
16 such member would bring special knowledge to the
17 proceeding, to appear before the panel, directly or
18 through counsel, under the supervision of responsible
19 United States Government officials; and

20 (4) in proceedings involving confidential infor-
21 mation, allow the appearance of such person only
22 through counsel as a member of the special delega-
23 tion.

24 **SEC. 312. DEFINITIONS.**

25 In this subtitle:

1 (1) APPELLATE BODY.—The term “Appellate
2 Body” means the Appellate Body established under
3 Article 17.1 of the Dispute Settlement Under-
4 standing.

5 (2) DISPUTE SETTLEMENT PANEL; PANEL.—
6 The terms “dispute settlement panel” and “panel”
7 mean a panel established pursuant to Article 6 of
8 the Dispute Settlement Understanding.

9 (3) DISPUTE SETTLEMENT UNDERSTANDING.—
10 The term “Dispute Settlement Understanding”
11 means the Understanding on Rules and Procedures
12 Governing the Settlement of Disputes referred to in
13 section 101(d)(16) of the Uruguay Round Agree-
14 ments Act.

15 (4) UNITED STATES PERSON.—The term
16 “United States person” means—

17 (A) a United States citizen or an alien ad-
18 mitted for permanent residence into the United
19 States; and

20 (B) a corporation, partnership, or other
21 legal entity organized under the laws of the
22 United States or of any State, the District of
23 Columbia, or any commonwealth, territory, or
24 possession of the United States.

1 (5) WTO.—The term “WTO” means the orga-
 2 nization established pursuant to the WTO Agree-
 3 ment.

4 (6) WTO AGREEMENT.—The term “WTO
 5 Agreement” means the Agreement Establishing the
 6 World Trade Organization entered into on April 15,
 7 1994.

8 **Subtitle C—Trade Dispute** 9 **Functions**

10 **SEC. 321. RESPONSIBILITY OF USTR.**

11 Section 141(c)(1)(C) of the Trade Act of 1974 (19
 12 U.S.C. 2171(c)(1)(C)) is amended—

13 (1) by striking “(C)” and inserting “(C)(i)”;
 14 and

15 (2) by adding at the end the following:

16 “(ii) have lead responsibility for investigating,
 17 and representing the United States in, disputes be-
 18 fore the World Trade Organization and disputes
 19 arising under other trade agreements to which the
 20 United States is a party;”.

21 **TITLE IV—SUBSIDIES**

22 **SEC. 401. APPLICATION OF COUNTERVAILING DUTIES TO** 23 **NONMARKET ECONOMY COUNTRIES.**

24 (a) IN GENERAL.—Section 701(a)(1) of the Tariff
 25 Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-

1 ing “(including a nonmarket economy country)” after
2 “country” each place it appears.

3 (b) USE OF ALTERNATE METHODOLOGIES.—Section
4 771(5)(E) of the Tariff Act of 1930 (19 U.S.C.
5 1677(5)(E)) is amended by adding at the end the fol-
6 lowing: “If the administering authority, with respect to a
7 nonmarket economy country, encounters special difficul-
8 ties in calculating the amount of a benefit under clause
9 (i), (ii), (iii), or (iv), the administering authority may use
10 methodologies for identifying and measuring the subsidy
11 benefit which take into account the possibility that pre-
12 vailing terms and conditions in that country may not al-
13 ways be available as appropriate benchmarks.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsections (a) and (b) apply to petitions filed under sec-
16 tion 702 of the Tariff Act of 1930 on or after the date
17 of the enactment of this Act.

18 (d) ANTIDUMPING PROVISIONS NOT AFFECTED.—
19 The amendments made by subsections (a) and (b) shall
20 not affect the status of a country as a nonmarket economy
21 country for the purposes of any matter relating to anti-
22 dumping duties under the Tariff Act of 1930.

1 **SEC. 402. CLARIFICATION TO INCLUDE EXCHANGE-RATE**
 2 **MANIPULATION AS COUNTERAVAILABLE SUB-**
 3 **SIDY UNDER TITLE VII OF THE TARIFF ACT**
 4 **OF 1930.**

5 (a) AMENDMENTS TO DEFINITION OF
 6 COUNTERAVAILABLE SUBSIDY.—Section 771(5)(D) of the
 7 Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended—

8 (1) by striking “The term” and inserting “(i)
 9 The term”;

10 (2) by redesignating clauses (i) through (iv) as
 11 subclauses (I) through (IV), respectively; and

12 (3) by adding at the end the following:

13 “(ii) In addition to clause (i), the term
 14 ‘provides a financial contribution’ means to en-
 15 gage in exchange-rate manipulation (as defined
 16 in paragraph (5C)).”.

17 (b) DEFINITION OF EXCHANGE-RATE MANIPULA-
 18 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.
 19 1677) is amended by inserting after paragraph (5B) the
 20 following new paragraph:

21 “(5C) DEFINITION OF EXCHANGE-RATE MANIP-
 22 ULATION.—

23 “(A) IN GENERAL.—For purposes of para-
 24 graphs (5) and (5A), the term ‘exchange-rate
 25 manipulation’ means protracted large-scale
 26 intervention by an authority to undervalue its

1 currency in the exchange market that prevents
2 effective balance-of-payments adjustment or
3 that gains an unfair competitive advantage over
4 any other country.

5 “(B) FACTORS.—In determining whether
6 exchange-rate manipulation is occurring and a
7 benefit thereby conferred, the administering au-
8 thority in each case—

9 “(i) shall consider the exporting coun-
10 try’s—

11 “(I) bilateral balance-of-trade
12 surplus or deficit with the United
13 States;

14 “(II) balance-of-trade surplus or
15 deficit with its other trading partners
16 individually and in the aggregate;

17 “(III) foreign direct investment
18 in its territory;

19 “(IV) currency-specific and ag-
20 gregate amounts of foreign currency
21 reserves; and

22 “(V) mechanisms employed to
23 maintain its currency at a fixed ex-
24 change rate relative to another cur-
25 rency and, particularly, the nature,

1 duration, monetary expenditures, and
 2 potential monetary expenditures of
 3 those mechanisms;

4 “(ii) may consider such other eco-
 5 nomic factors as are relevant; and

6 “(iii) shall measure the trade sur-
 7 pluses or deficits described in subclauses
 8 (I) and (II) of clause (i) with reference to
 9 the trade data reported by the United
 10 States and the other trading partners of
 11 the exporting country, unless such trade
 12 data are not available or are demonstrably
 13 inaccurate, in which case the exporting
 14 country’s trade data may be relied upon if
 15 shown to be sufficiently accurate and
 16 trustworthy.

17 “(C) TYPE OF ECONOMY.—An authority
 18 found to be engaged in exchange-rate manipula-
 19 tion may have either a market economy or a
 20 nonmarket economy or a combination thereof.”.

21 **SEC. 403. ITC STUDY OF SUBSIDIES BY PEOPLE’S REPUBLIC**
 22 **OF CHINA.**

23 (a) INVESTIGATION.—The United States Inter-
 24 national Trade Commission shall conduct a study, under
 25 section 332 of the Tariff Act of 1930 (19 U.S.C. 1332),

1 regarding how the People’s Republic of China uses govern-
 2 ment intervention to promote investment, employment,
 3 and exports. The study shall comprehensively catalog, and
 4 when possible quantify, the practices and policies that cen-
 5 tral, provincial, and local government bodies in the Peo-
 6 ple’s Republic of China use to support and to attempt to
 7 influence decisionmaking in China’s manufacturing enter-
 8 prises and industries. Chapters of this study shall include,
 9 but not be limited to, the following:

- 10 (1) Privatization and private ownership.
- 11 (2) Nonperforming loans.
- 12 (3) Price coordination.
- 13 (4) Selection of industries for targeted assist-
- 14 ance.
- 15 (5) Banking and finance.
- 16 (6) Utility rates.
- 17 (7) Infrastructure development.
- 18 (8) Taxation.
- 19 (9) Restraints on imports and exports.
- 20 (10) Research and development.
- 21 (11) Worker training and retraining.
- 22 (12) Rationalization and closure of uneconomic
- 23 enterprises.

24 (b) TIMING OF REPORTS ON STUDY.—The Congress
 25 requests that—

(1) not later than 9 months after the date of the enactment of this Act, the International Trade Commission complete its study under subsection (a) and submit a report on the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(2) not later than 1 year after the report under paragraph (1) is submitted, and annually thereafter through 2016, the International Trade Commission prepare and submit to the committees referred to in paragraph (1) an update of the report.

TITLE V—STRENGTHENING U.S. UNFAIR TRADE LAWS

Subtitle A—Determination of Dumping

SEC. 501. POLLING OF INDUSTRY SUPPORT IN ANTI-DUMPING CASES.

Section 732(c)(4)(D) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)(5)(D)) is amended by adding at the end the following flush sentences:

“If a petitioner requests that polling be done because of the large number of producers, the administering authority shall obtain from relevant Federal agencies lists of producers that are compiled for other purposes, including re-

1 ports of the Census Bureau and the United
2 States Department of Agriculture, to permit
3 such polling. If the agencies are unable or un-
4 willing to supply such information because of
5 privacy or other restrictions, the administering
6 authority shall not poll the industry, but shall
7 exercise its authority to initiate an investigation
8 under subsection (a)(1) if the information in
9 the petition otherwise warrants the initiation of
10 such an investigation.”.

11 **SEC. 502. NEW SHIPPER BONDING PRIVILEGE.**

12 Section 751(a)(2)(B) of the Tariff Act of 1930 (19
13 U.S.C. 1675(a)(2)(B)) is amended—

14 (1) by striking clause (iii); and

15 (2) by redesignating clause (iv) as clause (iii).

16 **SEC. 503. PREVENTION OF CIRCUMVENTION.**

17 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
18 1677j(c)) is amended by adding at the end the following
19 new paragraph:

20 “(3) SPECIAL RULE.—The administering au-
21 thority shall apply paragraph (1) with respect to al-
22 tered merchandise excluded from the merchandise
23 description used in an outstanding order or finding,
24 if such application is not inconsistent with the af-

1 firmative determination of the Commission on which
2 the order or finding is based.”.

3 **SEC. 504. ABSORPTION OF ANTIDUMPING DUTIES.**

4 Section 772(d)(1) of the Tariff Act of 1930 (19
5 U.S.C. 1677a(d)(1)) is amended—

6 (1) in subparagraph (C), by striking “and”;

7 (2) in subparagraph (D), by adding “and” after
8 the semicolon; and

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(E) the amount of any antidumping duty
12 determined to be due, unless evidence of record
13 demonstrates that such duty will be paid by a
14 purchaser not affiliated with the producer or
15 exporter.”.

16 **SEC. 505. ABSORPTION OF ANTIDUMPING DUTIES IN SUN-**
17 **SET REVIEW.**

18 Section 751(a)(4) of the Tariff Act of 1930 (19
19 U.S.C. 1675(a)(4)) is amended to read as follows:

20 “(4) ABSORPTION OF ANTIDUMPING DUTIES.—

21 During any review under this subsection initiated—

22 “(A) 2 years or 4 years after the publica-
23 tion of an antidumping duty order under sec-
24 tion 736(a), or

1 “(B) after publication of a determination
2 under this section to continue an order or sus-
3 pension agreement,
4 the administering authority, if requested, shall deter-
5 mine whether antidumping duties have been ab-
6 sorbed by a foreign producer or exporter subject to
7 the order if the subject merchandise is sold in the
8 United States through an importer who is affiliated
9 with that foreign producer or exporter. The admin-
10 istering authority may make such a determination at
11 its discretion, if requested, during a review initiated
12 in any other year under this section. The admin-
13 istering authority shall notify the Commission of its
14 findings regarding such duty absorption for the
15 Commission to consider in conducting a review
16 under subsection (c).”.

17 **SEC. 506. EXPORT PRICE AND CONSTRUCTED EXPORT**
18 **PRICE.**

19 Section 772(c)(2)(A) of the Tariff Act of 1930 (19
20 U.S.C. 1677a(c)(2)(A)) is amended by inserting “(includ-
21 ing countervailing duties imposed under this title to offset
22 any nonexport subsidies)” after “duties”.

23 **SEC. 507. NONMARKET ECONOMY METHODOLOGY.**

24 Section 773(c)(4) of the Tariff Act of 1930 (19
25 U.S.C. 1677b(c)(4)) is amended to read as follows:

1 “(4) VALUATION OF FACTORS OF PRODUC-
2 TION.—

3 “(A) IN GENERAL.—The administering au-
4 thority, in valuing factors of production under
5 paragraph (1), shall utilize, to the extent pos-
6 sible, the prices or costs of factors of production
7 in one or more market economy countries that
8 are—

9 “(i) at a level of economic develop-
10 ment comparable to that of the nonmarket
11 economy country; and

12 “(ii) significant producers of com-
13 parable merchandise.

14 In this paragraph, the term ‘surrogate’ refers to
15 the values, calculations, and market economy
16 countries used under this subparagraph.

17 “(B) VALUING MATERIALS USED IN PRO-
18 DUCTION.—In determining the value of mate-
19 rials used in production under subparagraph
20 (A), the following applies:

21 “(i) The administering authority may
22 use the value of inputs that are purchased
23 from market economy suppliers and are
24 not suspected of being dumped or sub-

1 sidized, only for the quantity of such pur-
2 chases.

3 “(ii) All materials purchased or other-
4 wise obtained from nonmarket economy
5 countries shall be valued using surrogate
6 values under subparagraph (A).

7 “(iii) A purchased material shall be
8 viewed as suspected of being subsidized if
9 there are any affirmative findings by the
10 United States or another WTO member of
11 export subsidy programs in the supplying
12 country.

13 “(iv) A purchased material shall be
14 viewed as suspected of being dumped if
15 there are any affirmative findings by the
16 United States or other WTO member of
17 dumping in the general category of mer-
18 chandise, or if information supplied by the
19 petitioner or otherwise of record suggests
20 significant underpricing to the purchaser
21 in the nonmarket economy country.

22 “(v) Surrogate values for materials
23 from a market economy country shall be
24 disregarded as not reflective of prices in
25 that surrogate market only if prices in that

1 market are viewed as aberrational, such as
2 a case in which prices undersell or exceed
3 any reported price in that surrogate mar-
4 ket by a large amount.

5 “(vi) There shall be a presumption
6 that the administering authority will in-
7 clude all market prices from a surrogate
8 market. Prices that are high or low shall
9 be excluded only when it is demonstrated
10 that the prices are not reflective of prices
11 in the surrogate country for the relevant
12 category of merchandise.

13 “(vii) If amounts pertaining to the
14 cost of production of imports into a surro-
15 gate country from market economy sup-
16 pliers are used for valuing the materials
17 used, such amounts shall be valued on the
18 basis of CIF (cost, insurance, and freight),
19 plus duties paid, to provide a proxy for
20 prices in the surrogate country competing
21 with locally produced goods. Such values
22 shall not be reduced by the import duties.

23 “(C) VALUING LABOR.—

24 “(i) The administering authority may
25 use an average of wage rates for market

1 economies, but shall ensure that labor
2 rates used fully reflect all labor costs, in-
3 cluding benefits, health care, and pension
4 costs.

5 “(ii) Labor shall be the total labor
6 employed by a nonmarket economy country
7 producer or used by a nonmarket economy
8 country producer in the overall business,
9 with allocations to other merchandise pro-
10 duced or sold by that producer that is not
11 subject merchandise.

12 “(iii) Labor shall reflect the average
13 labor for all other producers in the non-
14 market economy country that are pro-
15 ducing the particular merchandise subject
16 to investigation or review, and shall not be
17 limited to operations used for export.

18 “(D) VALUING FACTORY OVERHEAD, GEN-
19 ERAL SELLING AND ADMINISTRATIVE EX-
20 PENSES, AND PROFIT.—

21 “(i) IN GENERAL.—The administering
22 authority shall use the best information
23 available with respect to likely values of
24 factory overhead, general selling and ad-
25 ministrative expenses, and profit from a

1 surrogate country. If the values determined
2 under subparagraphs (B) and (C) for ma-
3 terials used and labor consumed result in
4 amounts that are demonstrably larger or
5 smaller than the amounts used in deter-
6 mining surrogate ratios from financial or
7 other reports from a surrogate country, ad-
8 justments shall be made to the ratios to re-
9 flect fully the level of such costs and prof-
10 its in the surrogate country on a per item
11 produced basis.

12 “(ii) RATIO DEFINED.—For purposes
13 of this subparagraph, the term ‘ratios’
14 means—

15 “(I) the ratio of factory overhead
16 to labor, materials, and energy;

17 “(II) the ratio of general selling
18 and administrative costs to factory
19 overhead, labor, materials, and en-
20 ergy; and

21 “(III) the ratio of profit to gen-
22 eral selling and administrative costs,
23 factory overhead, labor, materials, and
24 energy.

1 “(E) USE OF CONFIDENTIAL INFORMA-
 2 TION FROM A DOMESTIC PRODUCER IN A SUR-
 3 ROGATE COUNTRY.—The administering author-
 4 ity shall generally use publicly available infor-
 5 mation to value factors of production, except
 6 that, in a case in which any foreign producer in
 7 the surrogate country used by the administering
 8 authority is willing to provide information on
 9 factors of production to produce the same class
 10 of merchandise and such information is subject
 11 to verification, the administering authority shall
 12 accept and use such information. The relation-
 13 ship of the foreign producer providing the infor-
 14 mation to a party to the proceeding shall not be
 15 a basis for disqualification.”.

16 **SEC. 508. ADJUSTMENT OF CONSTRUCTED VALUES FOR IM-**
 17 **PUTED CREDIT COSTS.**

18 Section 773(a)(8) of the Tariff Act of 1930 (19
 19 U.S.C. 1677b(a)(8)) is amended by inserting the following
 20 before the period: “, except that constructed value may
 21 not be adjusted by deducting imputed credit expenses”.

22 **SEC. 509. DETERMINATIONS ON THE BASIS OF FACTS**
 23 **AVAILABLE.**

24 Section 776(a)(2)(B) of the Tariff Act of 1930 (19
 25 U.S.C. 1677e(a)(2)(B) is amended to read as follows:

“(B) fails to provide such information by the deadline for submission of the information or in the form and manner required, and in conformity with prior administering authority determinations in the proceeding and final judicial decisions in the proceeding, subject to subsections (c)(1) and (e) of section 782,”.

Subtitle B—Determination of Subsidization

SEC. 521. COUNTERVAILABLE SUBSIDY.

(a) DEFINITION OF COUNTERVAILABLE SUBSIDY.—Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)), as amended by section 401(b) of this Act, is further amended by adding at the end the following: “If there is a reasonable indication that a financial contribution by the provision of goods or services has distorted prices for those goods or services in the country that is subject to the investigation or review, or if data regarding such prices are otherwise unavailable, then the administering authority shall measure adequacy of remuneration by reference to data regarding prices for the same or a similar good or service from outside the country that is subject to the investigation or review. The administering authority shall adjust such data to the extent practicable to reflect prevailing market conditions in that

1 country. If there is a reasonable indication that prices
2 within a political subdivision, dependent territory, or pos-
3 session of a foreign country are distorted, or data are not
4 available, then the administering authority shall measure
5 adequacy of remuneration in that political subdivision, de-
6 pendent territory, or possession by reference to data from
7 the most comparable area or region in which prices are
8 not distorted, regardless of whether it is in the same coun-
9 try.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to any determination under sec-
12 tion 705 or 751 of the Tariff Act of 1930 (19 U.S.C.
13 1671d, 1675) that is made on or after January 1, 2002,
14 including published determinations for which judicial or
15 binational panel review has been initiated or completed
16 pursuant to section 516A of that Act (19 U.S.C. 1516a).
17 To the extent that the amendment made by subsection (a)
18 may be relevant to any such determination that has al-
19 ready been made, the administering authority shall amend
20 the determination and associated countervailing duty
21 order to bring them into compliance with the amendment
22 made by subsection (a), and shall undertake new adminis-
23 trative proceedings, if necessary, to do so.

1 **Subtitle C—Determination of**
2 **Material Injury**

3 **SEC. 531. PERIOD TO DETERMINE MATERIAL INJURY.**

4 Section 771(7)(A) of the Tariff Act of 1930 (19
5 U.S.C. 1677(7)(A)) is amended by adding at the end
6 thereof the following: “In cases other than critical cir-
7 cumstances, the Commission shall, in making its prelimi-
8 nary and final determinations of material injury under
9 this title, select an appropriate period for evaluating the
10 applicable statutory criteria up to the date on which the
11 petition is filed or on which the administering authority
12 initiates the investigation, as the case may be.”.

13 **SEC. 532. CAPTIVE PRODUCTION.**

14 Section 771(7)(C)(iv) of the Tariff Act of 1930 (19
15 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

16 “(iv) CAPTIVE PRODUCTION.—If do-
17 mestic producers transfer internally, in-
18 cluding to affiliated persons as defined in
19 paragraph (33), significant production of
20 the domestic like product for the produc-
21 tion of a downstream article and sell sig-
22 nificant production of the domestic like
23 product in the merchant market, then the
24 Commission, in determining market share
25 and the factors affecting financial perform-

1 ance set forth in clause (iii), shall focus
 2 primarily on the merchant market for the
 3 domestic like product.”.

4 **SEC. 533. PRICE.**

5 Section 771(7)(C)(ii) of the Tariff Act of 1930 (19
 6 U.S.C. 1677(7)(C)(ii)) is amended by adding at the end
 7 the following flush sentence:

8 “The Commission shall not conclude that
 9 imports of the subject merchandise do not
 10 have a significant effect on prices merely
 11 because of the volume of imports of the
 12 subject merchandise.”.

13 **SEC. 534. VULNERABILITY OF INDUSTRY; CUMULATION.**

14 (a) Section 771(7)(C)(iii) of the Tariff Act of 1930
 15 (19 U.S.C. 1677(7)(C)(iii)) is amended in the last sen-
 16 tence by striking the period at the end and inserting “,
 17 including whether the industry is vulnerable to the effects
 18 of imports of the subject merchandise.”.

19 (b) CUMULATION.—Section 771(7)(G)(i) of the Tar-
 20 iff Act of 1930 (19 U.S.C. 1677(7)(G)(i)) is amended to
 21 read as follows:

22 “(i) IN GENERAL.—For purposes of
 23 clauses (i) and (ii) of subparagraph (C),
 24 and subject to clause (ii), the Commission
 25 shall cumulatively assess the volume and

1 effect of imports of the subject merchan-
 2 dise from all countries subject to petitions
 3 filed under section 702(b) or 732(b), or
 4 subject to investigations initiated under
 5 702(a) or 732(a), if such petitions were
 6 filed, or such investigations were initiated,
 7 within 90 days before the date on which
 8 the Commission is required to make its
 9 final injury determination, and if such im-
 10 ports compete with each other and with
 11 the domestic like product in the United
 12 States market.”.

13 **SEC. 535. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**
 14 **INJURY.**

15 Section 771(7)(E)(ii) of the Tariff Act of 1930 (19
 16 U.S.C. 1677(7)(E)(ii)) is amended by adding at the end
 17 the following: “The Commission need not determine the
 18 significance of imports of the subject merchandise relative
 19 to other economic factors.”.

20 **SEC. 536. PERISHABLE AGRICULTURAL PRODUCTS.**

21 (a) DEFINITION OF INDUSTRIES.—Section 771(4)(A)
 22 of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) is
 23 amended by adding at the end the following: “If the Com-
 24 mission determines that an agricultural product has a
 25 short shelf life and is a perishable product, the Commis-

1 sion shall treat the producers of the product in a defined
2 period or season as the domestic industry. If the sub-
3 heading under the Harmonized Tariff Schedule of the
4 United States for an agricultural product has a 6- or 8-
5 digit classification based on the period of time during the
6 calendar year in which the product is harvested or im-
7 ported, such periods of time constitute a defined period
8 or season for purposes of this paragraph.”.

9 (b) DETERMINATION OF INJURY.—Section
10 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.
11 1677(7)(D)) is amended by adding at the end the fol-
12 lowing new clauses:

13 “(iii) In the case of an agricultural in-
14 dustry involving a perishable product with
15 a short shelf life, if a request for seasonal
16 evaluation has been made by the peti-
17 tioners, the Commission shall consider the
18 factors under subparagraph (C) on a sea-
19 sonal basis during the period identified as
20 relevant.

21 “(iv) In the case of agricultural prod-
22 ucts, partially picked or unpicked crops
23 and abandoned acreage may be considered
24 in lieu of other measures of capacity and
25 capacity utilization.

1 “(v) The impact of other factors, such
 2 as weather, on agricultural production and
 3 producers shall not be weighed against the
 4 contribution of the imported subject mer-
 5 chandise to the condition of the domestic
 6 industry.”.

7 **SEC. 537. ANTIDUMPING CASES AGAINST THE EUROPEAN**
 8 **UNION.**

9 Section 771(3) of the Tariff Act of 1930 (19 U.S.C.
 10 1677(3)) is amended by adding “other than those involv-
 11 ing the European Union” after “except for the purpose
 12 of antidumping proceedings”.

13 **SEC. 538. VERIFICATION BY THE COMMISSION.**

14 (a) IN GENERAL.—Section 782 of the Tariff Act of
 15 1930 (19 U.S.C. 1677m) is amended by adding at the end
 16 the following:

17 “(j) VERIFICATION BY THE COMMISSION.—The Com-
 18 mission shall verify information submitted by any foreign
 19 producer relied upon in making—

20 “(1) a final determination in an investigation,
 21 and

22 “(2) a final determination in a review under
 23 section 751(c).”.

24 (b) EFFECTIVE DATE.—The amendment made by
 25 subsection (a) shall apply with respect to any investigation

1 or review that is pending on, or is commenced on or after,
 2 the date of the enactment of this Act.

3 **Subtitle D—General Provisions**

4 **SEC. 541. DETERMINATION OF CASH DEPOSIT RATES.**

5 Section 751(a)(2)(C) of the Tariff Act of 1930 (19
 6 U.S.C. 1675(a)(2)(C)) is amended by adding at the end
 7 the following: “The ad valorem rate calculated for the as-
 8 sessment of duties shall be used as the ad valorem rate
 9 for deposits of estimated duties.”.

10 **SEC. 542. EXCHANGE OF INFORMATION BETWEEN AND** 11 **AMONG AGENCIES.**

12 (a) PROPRIETARY INFORMATION.—Section 777(b) of
 13 the Tariff Act of 1930 (19 U.S.C. 1677f(b)) is amended
 14 by adding at the end the following:

15 “(4) EXCHANGE OF INFORMATION BETWEEN
 16 AND AMONG AGENCIES.—Notwithstanding any other
 17 provision of law, proprietary information submitted
 18 to the administering authority, the Commission, or
 19 the Bureau of Customs and Border Protection may
 20 be exchanged between and among those agencies
 21 upon their request or upon the request of an inter-
 22 ested party, under the following circumstances:

23 “(A) Proprietary information submitted to
 24 the administering authority or to the Commis-

1 sion may be exchanged between such agencies
2 if—

3 “(i) an interested party identifies pro-
4 prietary information submitted for the
5 record at one agency that is inconsistent
6 with information of record at the other
7 agency;

8 “(ii) an interested party identifies
9 proprietary information submitted at one
10 agency that is directly relevant to an issue
11 presented in proceedings before the other
12 agency; or

13 “(iii) the administering authority or
14 the Commission believes that the incorpo-
15 ration of proprietary information sub-
16 mitted at the other agency would be help-
17 ful in reaching its determination in the
18 proceeding.

19 “(B) Proprietary information submitted to
20 the administering authority, the Commission, or
21 the Bureau of Customs and Border Protection
22 may be exchanged between and among such
23 agencies at the request of the agency or the re-
24 quest of an interested party if such exchange

1 would facilitate the administration and enforce-
2 ment of the law.

3 “(5) USE DURING PROCEEDINGS.—Proprietary
4 as well as nonproprietary information of record sub-
5 mitted to or generated by the administering author-
6 ity or the Commission during any segment of a pro-
7 ceeding (including information from the Bureau of
8 Customs and Border Protection) may be incor-
9 porated into the record of any other segment of the
10 same proceeding and released by the administering
11 authority under a protective order to qualified appli-
12 cants if—

13 “(A) an interested party identifies propri-
14 etary information submitted during one seg-
15 ment of the proceeding that is inconsistent with
16 information submitted in another segment of
17 the proceeding;

18 “(B) an interested party identifies propri-
19 etary information submitted during one seg-
20 ment of the proceeding that is directly relevant
21 to an issue presented in another segment of the
22 proceeding; or

23 “(C) the administering authority or the
24 Commission believes that the incorporation of a
25 selected portion of the record from one segment

1 of the proceeding would be helpful in reaching
2 its determination in another segment of the
3 proceeding.”.

4 (b) LIMITED DISCLOSURE UNDER PROTECTIVE
5 ORDER.—Section 777(c)(1)(A) of the Tariff Act of 1930
6 (19 U.S.C. 1677f(c)(1)(A)) is amended by adding at the
7 end the following: “The proprietary information released
8 pursuant to this subparagraph under a protective order
9 shall include the records of the Bureau of Customs and
10 Border Protection and the administering authority that
11 are used by those agencies to liquidate entries and assess
12 and collect antidumping and countervailing duties, includ-
13 ing the underlying entry documents.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply with respect to any proceeding
16 under title VII of the Tariff Act of 1930 that is pending
17 on, or is commenced on or after, the date of the enactment
18 of this Act.

19 **SEC. 543. LIQUIDATION OF CERTAIN ENTRIES.**

20 Section 504(d) of the Tariff Act of 1930 (19 U.S.C.
21 1504(d)) is amended by adding at the end the following:
22 “In the case of any entry that is subject to a antidumping
23 or countervailing duty order, the preceding sentence shall
24 not apply, and such entry shall be liquidated at the rate

1 finally determined by the administering authority or re-
2 viewing court.”.

3 **SEC. 544. ASSISTANT ATTORNEY GENERAL FOR TRADE LAW**
4 **ENFORCEMENT.**

5 (a) APPOINTMENT.—Subtitle D of title VII of the
6 Tariff Act of 1930 (19 U.S.C. 1677 et seq.) is amended
7 by adding at the end the following new section:

8 **“SEC. 784. ASSISTANT ATTORNEY GENERAL FOR TRADE**
9 **LAW ENFORCEMENT.**

10 “The President shall appoint, by and with the advice
11 and consent of the Senate, an Assistant Attorney General
12 for Trade Law Enforcement. The Assistant Attorney Gen-
13 eral for Trade Law Enforcement shall be responsible for
14 investigating and prosecuting fraud in any proceeding
15 under this title.”.

16 (b) CONFORMING AMENDMENT.—The table of con-
17 tents for title VII of the Tariff Act of 1930 is amended
18 by inserting after the item relating to section 783 the fol-
19 lowing new item:

“Sec. 784. Assistant Attorney General for Trade law Enforcement.”.

20 (c) COMPENSATION.—Section 5315 of title 5, United
21 States Code, is amended by inserting after “Assistant At-
22 torneys General (10)” the following:

23 “Assistant Attorney General for Trade Law
24 Enforcement.”.

1 **Subtitle E—Effective Date**

2 **SEC. 551. EFFECTIVE DATE.**

3 Except as provided in sections 521(b), 538(b), and
4 542(c), the amendments made by this title shall apply with
5 respect to determinations made under title VII of the Tar-
6 iff Act of 1930 that—

7 (1) are made with respect to investigations ini-
8 tiated or petitions filed on or after the date of the
9 enactment of this Act; or

10 (2) have not become final as of such date of en-
11 actment.

12 **TITLE VI—SAFEGUARD** 13 **AMENDMENTS**

14 **Subtitle A—Safeguards in General**

15 **SEC. 601. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE** 16 **TRADE ACT OF 1974.**

17 (a) TEST FOR POSITIVE ADJUSTMENTS TO IMPORT
18 COMPETITION.—Section 201(a) of the Trade Act of 1974
19 (19 U.S.C. 2251(a)) is amended by striking “be a sub-
20 stantial cause of serious injury, or the threat thereof,” and
21 inserting “cause or threaten to cause serious injury”.

22 (b) INVESTIGATIONS AND DETERMINATIONS.—Sec-
23 tion 202 of such Act (19 U.S.C. 2252) is amended—

24 (1) in subsection (b)(1)(A), by striking “be a
25 substantial cause of serious injury, or the threat

1 thereof,” and inserting “cause or threaten to cause
2 serious injury”;

3 (2) by amending subsection (b)(1)(B) to read
4 as follows:

5 “(B) For purposes of this section, the term
6 ‘cause’ refers to a cause that contributes signifi-
7 cantly to serious injury, or the threat thereof, to the
8 domestic industry but need not be equal to or great-
9 er than any other cause.”;

10 (3) in subsection (c)—

11 (A) by amending paragraph (1)(A) to read
12 as follows:

13 “(A) with respect to serious injury—

14 “(i) change in the level of sales, pro-
15 duction, productivity, capacity utilization,
16 profits and losses, and employment;

17 “(ii) the significant idling of produc-
18 tive facilities in the domestic industry;

19 “(iii) the inability of a significant
20 number of firms to carry out domestic pro-
21 duction operations at a reasonable level of
22 profit; and

23 “(iv) significant unemployment or
24 underemployment within the domestic in-
25 dustry.”;

1 (B) in paragraph (1)(B)—

2 (i) in clause (iii) by striking “; and”

3 and inserting “, and”; and

4 (ii) by inserting after clause (iii) the
5 following:

6 “(iv) foreign production capacity, for-
7 eign inventories, the level of demand in
8 third country markets, and the availability
9 of other export markets to absorb any ad-
10 ditional exports; and”;

11 (C) by amending paragraph (1)(C) to read
12 as follows:

13 “(C) with respect to cause—

14 “(i) the rate, amount, and timing of
15 the increase in imports of the product con-
16 cerned in absolute and relative terms, in-
17 cluding whether there has been a substan-
18 tial increase in imports over a short period
19 of time; and

20 “(ii) the share of the domestic market
21 taken by increased imports.”;

22 (D) by redesignating paragraphs (3)
23 through (6) as paragraphs (5) through (8), re-
24 spectively;

1 (E) by striking paragraph (2) and insert-
2 ing the following:

3 “(2) In making determinations under subpara-
4 graphs (A) and (B) of paragraph (1), if domestic
5 producers internally transfer, including to affiliated
6 persons as defined in section 771(33) of the Tariff
7 Act of 1930, significant production of the article like
8 or directly competitive with the imported article for
9 the production of a downstream article and sell sig-
10 nificant production of the article like or directly
11 competitive with the imported article in the mer-
12 chant market, then the Commission, in determining
13 market share and the factors affecting financial per-
14 formance set forth in subparagraphs (A) and (B) of
15 paragraph (1), shall focus primarily on the merchant
16 market for the article like or directly competitive
17 with the imported article.

18 “(3) In making determinations under sub-
19 section (b), the Commission shall—

20 “(A) consider the condition of the domestic
21 industry over the course of the relevant busi-
22 ness cycle, but may not aggregate the causes of
23 declining demand associated with a recession or
24 economic downturn in the United States econ-

1 omy into a single cause or threat of serious in-
2 jury; and

3 “(B) examine factors other than imports
4 which may cause or threaten to cause serious
5 injury to the domestic industry.

6 The Commission shall include the results of its ex-
7 amination under subparagraph (B) in the report
8 submitted by the Commission to the President under
9 subsection (e).

10 “(4) In making determinations under sub-
11 section (b), the Commission shall consider whether
12 any change in the volume of imports that has oc-
13 curred since a petition under subsection (a) was filed
14 or a request under subsection (b) was made is re-
15 lated to the pendency of the investigation, and if so,
16 the Commission may reduce the weight accorded to
17 the data for the period after the petition under sub-
18 section (a) was filed or the request under subsection
19 (b) was made in making its determination of serious
20 injury, or the threat thereof.”; and

21 (F) in paragraph (5), as so
22 predesignated—

23 (i) by striking “and (B)” and insert-
24 ing “, (B), and (C)”; and

1 (ii) by striking “be a substantial cause
2 of serious injury, or the threat thereof,”
3 and inserting “cause or threaten to cause
4 serious injury”;

5 (4) in subsection (d)—

6 (A) in paragraph (1)(A)(ii), by striking
7 “be, or likely to be a substantial cause of seri-
8 ous injury, or the threat thereof,” and inserting
9 “cause, or be likely to cause, or threaten to
10 cause, or be likely to threaten to cause, serious
11 injury”;

12 (B) in paragraph (1)(C), in the matter fol-
13 lowing clause (ii), by striking “a substantial
14 cause of serious injury, or the threat thereof,”
15 and inserting “causing or threatening to cause
16 serious injury”;

17 (C) by amending paragraph (2)(A) to read
18 as follows:

19 “(2)(A) When a petition filed under subsection
20 (a) or a request filed under subsection (b) alleges
21 that critical circumstances exist and requests that
22 provisional relief be provided under this subsection
23 with respect to imports of the article identified in
24 the petition or request, the Commission shall, not
25 later than 45 days after the petition or request is

1 filed, determine, on the basis of available informa-
2 tion, whether—

3 “(i) there is clear evidence that increased
4 imports (either actual or relative to domestic
5 production) of the article are causing or threat-
6 ening to cause serious injury to the domestic in-
7 dustry producing an article like or directly com-
8 petitive with the imported article; and

9 “(ii) delay in taking action under this
10 chapter would cause damage to that industry
11 that would be difficult to repair.

12 In making the evaluation under clause (ii), the Commis-
13 sion should consider, among other factors that it considers
14 relevant, the timing and volume of the imports, including
15 whether there has been a substantial increase in imports
16 over a short period of time, and any other circumstances
17 indicating that delay in taking action under this chapter
18 would cause damage to the industry that would be difficult
19 to repair.”; and

20 (D) in paragraph (2)(D), by striking “30”
21 and inserting “20”.

22 (c) PRESIDENTIAL DETERMINATIONS.—

23 (1) ACTION BY PRESIDENT.—Section 203(a) of
24 the Trade Act of 1974 (19 U.S.C. 2253(a)) is
25 amended—

1 (A) in paragraph (1)(A), by striking “and
 2 provide greater economic and social benefits
 3 than costs” and inserting “and will not have an
 4 adverse impact on the United States clearly
 5 greater than the benefits of such action”;

6 (B) in paragraph (2)(F)(ii), by striking
 7 “compensation;” and inserting the following:
 8 “compensation, except that the President shall
 9 give substantially greater weight to the factors
 10 set out in clause (i) than to those set out in
 11 clause (ii) and this clause;”; and

12 (C) by amending paragraph (2)(I) to read
 13 as follows:

14 “(I) the potential for harm to the national
 15 security of the United States; and”.

16 (2) IMPLEMENTATION OF ACTION REC-
 17 OMMENDED BY COMMISSION.—(A) Section 203(c) of
 18 the Trade Act of 1974 (19 U.S.C. 2253(c)) is
 19 amended by striking “90” and inserting “60”.

20 (B) Section 152(c)(1) of the Trade Act of 1974
 21 (19 U.S.C. 2192(c)(1)) is amended by striking “not
 22 counting any day which is excluded under section
 23 154(b),” and inserting “counting all calendar days
 24 in the case of a resolution described in subsection
 25 (a)(1)(A), and not counting any day which is ex-

1 cluded under section 154(b) in the case of a resolu-
2 tion described in subsection (a)(1)(B),”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) Section 203(e)(6)(B) of the Trade Act of
5 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
6 striking “substantially”.

7 (2) Section 264(c) of the Trade Act of 1974
8 (19 U.S.C. 2354(c)) is amended by striking “a sub-
9 stantial cause of serious injury or threat thereof”
10 and inserting “causing or threatening to cause seri-
11 ous injury”.

12 (3) Section 154(b) of the Trade Act of 1974
13 (19 U.S.C. 2194(b)) is amended by striking the
14 matter that precedes paragraph (1) and inserting
15 the following:

16 “(b) The 60-day period referred to in section 203(c)
17 and the 90-day period referred to in section 407(c)(2)
18 shall be computed by excluding—”.

19 **Subtitle B—Fair Trade With China**

20 **SEC. 611. CLARIFICATION OF STANDARD FOR PRESI-** 21 **DENTIAL ACTION ON ITC FINDING OF MAR-** 22 **KET DISRUPTION.**

23 (a) AMENDMENTS TO STANDARD FOR TRADE REP-
24 RESENTATIVE’S RECOMMENDATION TO THE PRESI-

1 DENT.—Section 421(h)(2) of the Trade Act of 1974 (19
2 U.S.C. 2451(h)(2)) is amended—

3 (1) by striking “(2) Within” and inserting
4 “(2)(A) Within”; and

5 (2) by adding at the end the following:

6 “(B) In making a recommendation to the President
7 under subparagraph (A), the Trade Representative shall
8 consider the facts found, or conclusions drawn, by the
9 Commission as they are reported to the Trade Representa-
10 tive, and the Trade Representative may not conduct an
11 additional review or reconsideration of the facts found or
12 conclusions reached by the Commission.

13 “(C) If the Commission in its report makes an af-
14 firmative finding of market disruption, the Trade Rep-
15 resentative shall apply a presumption in favor of relief to
16 prevent or remedy the market disruption.

17 “(D) The following factors may not be used as the
18 basis of a recommendation by the Trade Representative
19 to recommend denying relief under this section:

20 “(i) The presence or absence (whether actual or
21 potential) of third-country imports of the product
22 under investigation.

23 “(ii) Any results of the econometric model
24 known as the Commercial Policy Analysis System
25 (COMPAS) or equivalent model.”.

1 (b) AMENDMENTS TO STANDARD FOR PRESIDENTIAL
2 ACTION.—Section 421(k) of the Trade Act of 1974 (19
3 U.S.C. 2451(k)) is amended by adding at the end the fol-
4 lowing:

5 “(3) The President’s determination shall be based on
6 the facts found, or conclusions drawn, by the Commission
7 as they are reported to the Trade Representative under
8 subsection (g).

9 “(4) If the Commission in its report makes an affirm-
10 ative finding of market disruption, the President shall
11 apply a presumption in favor of relief to prevent or remedy
12 the market disruption.

13 “(5) Any determination by the President under para-
14 graph (1) that providing import relief is not in the na-
15 tional economic interest of the United States may not be
16 based on the following factors:

17 “(A) The presence or absence (whether actual
18 or potential) of third-country imports of the product
19 under investigation.

20 “(B) Any results of the econometric model
21 known as the Commercial Policy Analysis System
22 (COMPAS) or equivalent model.”.

1 **Subtitle C—Report on Doha Round**

2 **SEC. 621. REPORT.**

3 (a) IN GENERAL.—Not later than 6 months after the
4 date of the enactment of this Act, the United States Trade
5 Representative shall submit to the Congress a report ex-
6 plaining in detail how agreements resulting from negotia-
7 tions on the Doha Development Agenda of the World
8 Trade Organization will implement the provisions of the
9 Agreement on Antidumping, the Agreement of Subsidies
10 and Countervailing Measures, and the Agreement on Safe-
11 guards, as such agreements were approved by the Con-
12 gress under section 101 of the Uruguay Round Agree-
13 ments Act (19 U.S.C. 3511), as those provisions relate
14 to the following issues:

15 (1) The standard of review in the application of
16 the Agreement on Antidumping, the Agreement on
17 Subsidies and Countervailing Measures (SCM), and
18 the Agreement on Safeguards.

19 (2) Analysis of injury causation nonattribution
20 under the WTO in the agreements referred to in
21 paragraph (1).

22 (3) The use of threat of injury analysis under
23 the agreements referred to in paragraph (1).

24 (4) The use of advisory opinions under the
25 agreements referred to in paragraph (1).

1 (5) Consideration of sunset review waivers
2 under the Agreement on Antidumping and the
3 Agreement on SCM.

4 (6) The application of a facts available stand-
5 ard under the Agreement on Antidumping and the
6 Agreement on SCM.

7 (7) Analysis of subsidies in the context of a pri-
8 vatization under the Agreement on SCM.

9 (8) The treatment of export restraints under
10 the Agreement on SCM.

11 (9) The use of benchmark prices under the
12 Agreement on SCM.

13 (10) The application of pass-through analysis
14 under the Agreement on SCM.

15 (11) The treatment of equity infusions under
16 the Agreement on SCM.

17 (12) The treatment of nonperforming loans
18 under the Agreement on SCM

19 (13) The absence of a requirement to inves-
20 tigate unforeseen developments in analyses under
21 the Agreement on Safeguards.

22 (14) The absence of a requirement to show sud-
23 den and sharp increases in imports in analyses
24 under the Agreement on Safeguards.

1 (15) The use of multiple averaging periods
2 under the Agreement on Antidumping.

3 (16) The calculation of the all others rate under
4 the Agreement on Antidumping.

5 (17) Analysis of zeroing under the Agreement
6 on Antidumping.

7 (18) Analysis of selling, general and adminis-
8 trative expenses, and profit under article 2.2.2(ii) of
9 the Agreement on Antidumping.

10 (b) DEFINITIONS.—In this section:

11 (1) AGREEMENT ON ANTIDUMPING.—The term
12 “Agreement on Antidumping” means the Agreement
13 on Implementation of Article VI of the General
14 Agreement on Tariffs and Trade 1994 referred to in
15 section 101(d)(7) of the Uruguay Round Agree-
16 ments Act (19 U.S.C. 3511(d)(7)).

17 (2) AGREEMENT ON SUBSIDIES AND COUNTER-
18 VAILING MEASURES; AGREEMENT ON SCM.—The
19 terms “Agreement on Subsidies and Countervailing
20 Measures” and “Agreement on SCM” means the
21 Agreement on Subsidies and Countervailing Meas-
22 ures referred to in section 101(d)(12) of the Uru-
23 guay Round Agreements Act (19 U.S.C.
24 3511(d)(12)).

1 (3) AGREEMENT ON SAFEGUARDS.—The term
2 “Agreement on Safeguards” means the Agreement
3 on Safeguards referred to in section 101(d)(13) of
4 the Uruguay Round Agreements Act (19 U.S.C.
5 3511(d)(13)).

6 **TITLE VII—MISCELLANEOUS**
7 **PROVISIONS**

8 **SEC. 701. CONSTRUCTION.**

9 The amendments made by this Act shall not be con-
10 strued to create any inference with respect to the interpre-
11 tation of the provisions of law amended by this Act as
12 such provisions were in effect before the enactment of this
13 Act.

14 **SEC. 702. APPLICATION TO GOODS FROM CANADA AND**
15 **MEXICO.**

16 Pursuant to section 1902 of the North American
17 Free Trade Agreement and section 408 of the North
18 American Free Trade Agreement Implementation Act, the
19 amendments made by this Act shall apply to goods from
20 Canada and Mexico.

○